IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 272 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHANT KRISHNAPURI KALYANPURI

Appearance:

1. Criminal Appeal No. 272 of 1992

MR DP JOSHI, APP for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/06/2001

ORAL JUDGEMENT

1. The State of Gujarat having been aggrieved by the judgment and order of acquittal passed by the learned

Judicial Magistrate First Class, Kalol in Criminal Case No. 608 of 1991 dated 10/1/1992, has preferred this appeal.

2. The prosecution case is that land bearing survey no. 59 is situated in the bed of river Goma. In the revenue record it is entered in the name of present respondent. The allegation of the prosecution is that respondent had excavated sand from the said plot of land without having any requisite permit from the Government and thereby he had committed an offence under Rule 5 read with Rule 42 of the Gujarat Minor Mineral Rules, 1966. One Devendrakumar Ranchhodbhai Goswami, who is also prosecution witness no. 1, had filed complaint against respondent in the Court of Ld. Judicial Magistrate First Class at Kalol for the alleged commission of aforesaid offence. After the completion of all the initial formalities, trial took and the prosecution led oral evidence as well as produced certain documentary evidence in support of its case. Prosecution witness no. 1 Devendrakumar Ranchhodbhai Goswami stated in his evidence that he was working as Mine Supervisor for the last 26 years and the District of Panchmahals was under his jurisdiction. He has produced certain documentary evidence in support of the case. One of the duties assigned to him was to prevent illegal excavation and transport of minerals. He has stated that for selling sand, permit is required. He has further stated that in respect of survey no. 59 he had received applications that illegal excavation was being done in survey no. 59 and the person doing it did not hold pass or permit for the same. He therefore, went to the site, but he could not ascertain the actual location of survey no. 59 as the river bed was quite wide and survey no. 59 had got merged with the river. He, therefore, sought help of the Surveyor to locate the boundaries of survey no. 59. According to him the Surveyor carried out the survey and found that the pits were done in survey no.59. Panchnama was duly drawn wherein different measurements were also noted. He has further stated that he contacted respondent on 23/4/1991 with a view to seek explanation from him as to how the pits came to be made in survey no. 59. The respondent explained that he had not excavated sand, but it was the residents of neighbouring locality who had taken the sand for their household purpose. According to the assessment of this witness about 600 brass of sand was taken out from the said survey no. Since the pits were caused in survey no. 59 and since the respondent was in possession of that survey no., he was supposed to have the lease permit. However, since he did not possess any lease permit, a complaint was lodged

in the Court.

In the cross-examination, this witness has stated that even if the excavation of minor mineral and the transport thereof has been done by some one else, the owner/occupier would be guilty of committing the aforesaid offence. This witness has stated that earlier in the year 1985 one Girishbhai Natvarbhai Shah was given permission to excavate the minor mineral for a period of 3 years and he had though recorded his statement, it was not produced in the proceedings of this case. This witness has stated that earlier in the year 1985 one Girishbhai Natvarbhai Shah was given permission to excavate minor mineral for a period of 3 years and he had, though recorded his statement, it was not produced in the proceedings of this case. He has also admitted that the lease given in favour of Girishbhai was renewed in the year 1988 but he did not know upto what year it was renewed. He has also admitted that after the lease of Girishbhai was over, he did not have any record to show what was the level of the land. In his evidence he has stated that he did not know what portion of survey no. 59 remained in the river itself and what portion remained outside the river.

Looking to the evidence of this witness, it is very clear that he has no personal knowledge that it was the respondent who had excavated sand from survey no. 59 and sold it without requisite pass or permit. His evidence also does not reveal that he had contacted any person who had actually seen the respondent doing it. His evidence shows that at the time of his visit he had noticed marks of tyres of tractor near the pits in survey no. 59 and, therefore, he contacted the respondent to seek his explanation. The respondent told him that it was the residents of neighbouring locality who had excavated the sand for using it for their household purpose. Evidence of this witness does not throw any light on the point that it was the respondent who was illegally excavating the sand and selling it without pass or permit.

3. The prosecution has thereafter examined Natvarlal Zaverbhai Patel as P.W. No. 2 at Exh. 18, who states in his evidence that because of the excavation of sand there is erosion of land and the same was causing damage to their houses. According to this witness, the house are situated about half furlong from the said survey no. 59, which according to him, belong to one Kalyanbhai. He alongwith other residents of village Ramnath submitted a joint application to the concerned authority to take some

action against the respondent. In the cross-examination by the defence, this witness admits that the relations of the village people are not cordial with the respondent. He also does not have any idea about the boundaries of survey no. 59 nor does he have any idea from what point it starts and at what point it ends. He also admits that there is a way passing through survey no. 59 for going to village Kandach from village Ramnath and vehicles like tractor, bullock cart, etc. ply thereon. He also admits in his cross-examination that he did not have any idea to what amount of sand was taken when and who had taken the same.

From the evidence of this witness it becomes very clear that the village people are against the respondent as they apprehend that excavation of sand from survey no. 59 would cause damage to their houses. This witness, however, does not have any idea as to who is excavating the sand and transporting it for sale. The joint application has been given by the village people against the respondent only because survey no. 59 belongs to him. The evidence of this witness also does not help the prosecution to establish that it was the respondent who had indulged into such illegal activity.

Prosecution has examined Hasmukhbhai Shantilal Barot as P.W. No.3 at Exh.20 to prove that survey no. 59 is running in the name of respondent in the revenue record. Lastly the prosecution has examined Somabhai Kalidas as P.W. No. 4 at Exh. 26, who had surveyed the land at the instance of the complainant. Evidence of both these witnesses also does not establish anything against the respondent.

4. I have gone through the judgment of the Learned Magistrate and the reasons assigned by him are quite proper and justifiable. I do not see any need to interfere with the same. Hence, this appeal deserves to be dismissed and it is ordered to be dismissed.

[Akshay H. Mehta, J.]

* Pansala.